



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

August 5, 2024

Dr. Franklin R. Narducci, Superintendent
Chandler Unified School District
1425 West Frye Road
Chandler, AZ 85224

By email only to Narducci.Frank@cusd80.com

Re: OCR Complaint Number 08-22-1413 - Chandler Unified School District

Dear Dr. Narducci:

This is to notify you of the determination made by the United States Department of Education (the Department), Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Chandler Unified School District (the District) on May 23, 2022. The Complainant alleges that the District discriminated against her son, a high school student (the Student), at [Redacted Content] (the School) on the basis of his race (Black and Latino) on or around [Redacted Content], when the District disciplined him more severely than non-Black or non-Latino students who engaged in similar conduct.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin by recipients of federal financial assistance from the Department. OCR also enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. Because the District receives federal financial assistance from the Department, the District must comply with Title VI, Title IX, and their implementing regulations.

During the course of the investigation, OCR reviewed documentation provided by the Complainant and the District. In addition, OCR interviewed the Complainant and District staff. As discussed below, OCR found that the District discriminated against the Student based on his race when the District treated the Student differently than similarly situated students of other races with respect to discipline and did not provide a legitimate, non-discriminatory reason for the different treatment. Although the District set forth non-discriminatory explanations for the different treatment of the Student, OCR determined that the District departed from its usual

policies and procedures in disciplining the Student and that the reasons offered were a pretext for different treatment on the basis of race. In addition, based on the evidence obtained to date, OCR identified compliance concerns with regard to the District's responses to reports of both antisemitic conduct under Title VI and possible sexual harassment by students under Title IX. The District agreed to resolve these concerns and the Title VI violation OCR identified in the enclosed Resolution Agreement (the Agreement) under Sections 302 and 303(b), respectively, of OCR's [Case Processing Manual \(CPM\)](#). The legal standards, facts gathered, reasons for OCR's compliance determinations and concerns, and the Agreement's terms are summarized below.

I. LEGAL STANDARDS

A. Different Treatment under Title VI

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Sections 100.3(b)(1)(i)-(vi) further state, in relevant part, that a school may not, on the ground of race, color, or national origin, deny an individual any service or benefit provided under the program; provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also provides that a school may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

B. National Origin Harassment Under Title VI

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI. Title VI's protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity. To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race,

color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct on the basis of race, color, or national origin that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing acts need not be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant's or victim's race, color, or national origin so long as it is motivated by race, color, or national origin (i.e., it might be based on the race, color, or national origin of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation.

C. Sexual Harassment Under Title IX

Title IX and its implementing regulation at 34 C.F.R. § 106.31(a) prohibit recipients of federal financial assistance from subjecting students to discrimination based on sex under any of the recipient's education programs or activities. Sexual harassment is a form of discrimination based on sex under Title IX. The regulation at 34 C.F.R. 106.30 defines "sexual harassment," in relevant part, as "conduct on the basis of sex" that includes "(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." The Title IX regulation at 34 C.F.R. § 106.44(a) requires a recipient to respond promptly to actual knowledge of sexual harassment in the recipient's education program or activity against a person in the United States in a manner that is not deliberately indifferent. In the elementary and secondary school context, the regulations define "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of an elementary or secondary school. *Id.* § 106.30(a). The regulations state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. *Id.* § 106.44(a).

II. FACTS

This Section summarizes the facts that OCR found during this investigation based on OCR's interviews with school-level administrators and school-level employees and its review of the Student's disciplinary file, relevant District policies, and examples from the School discipline files of similarly situated students who were disciplined during school years (SY) 2020-21 or 2021-22.

During the 2020-2021 school year, the most recent year for which there is OCR Civil Rights Data Collection data, the School enrolled 3,100 students. The School's demographics by race

were 69% white, 17% Latino/Hispanic of any race, 7% Asian, 3% Black, 3.0% Two or More Races, 0.4% American Indian, and less than 0.1% Native Hawaiian or Pacific Islander.

A. Record of Student Incident

During SY 2021-22, the Student was an eleventh-grade student at the School. Prior to the incident in question, the Student had [Redacted Content]. OCR reviewed the records related to the disciplinary incident involving the Student, which included a typed Behavior Detail Report (BDR), a handwritten Conduct Referral Report (CRR), a handwritten Witness Statement, and correspondence between the School and the Complainant.

The BDR, completed by the Assistant Principal (the Assistant Principal) [Redacted Content], indicates that an incident occurred at [Redacted Content]. The BDR states, “Student [Redacted Content].” The BDR does not state who found [Redacted Content] or when that person found the [Redacted Content]. The BDR codes the alleged offense as “disruption.” The BDR indicates that the Student had [Redacted Content] prior to the incident. In addition, the record contains a CRR, also completed by the Assistant Principal, which contains a handwritten description of the disciplinary incident that is identical to the description of the incident in the BDR.

The Assistant Principal told OCR that he received a [Redacted Content]. He stated [Redacted Paragraph] The Student’s Witness Statement taken at the time of the incident explains:

[Redacted Paragraph]

The Witness Statement identifies another student as a witness (the Witness). The Assistant Principal told OCR that he did not interview the Witness because the Student acknowledged that [Redacted Content]. When OCR asked the Assistant Principal whether the Witness could have corroborated the Student’s version of events or implicated the Student further, the Assistant Principal explained that “typically, friends are not willing to go against what their friend says” to explain why he did not interview the Witness. District Policy JKD requires District staff to “make reasonable efforts to verify facts and statements prior to making judgments.”

The BDR indicates that the Assistant Principal notified the Complainant that the Student would receive a [Redacted Content] for “disruption.” The District’s Student Handbook and Policy JIC identify Student-Parent Conference through Suspension as the range of sanctions available for offenses of disruption. Further, District Policy JK-R states that a student’s first violation should merit a lighter penalty than subsequent violations and that District employees should consider relevant factors in determining the appropriate penalty; however, the Policy contains no specific guidance as to what constitutes a “relevant factor.” Neither the BDR nor CRR contains an explanation for [Redacted Content] as an appropriate disciplinary sanction.

In its Narrative Statement to OCR, the District asserted that the Assistant Principal believed [Redacted Content]. However, during an interview with OCR, the Assistant Principal stated that although it was possible the Student [Redacted Content], the Assistant Principal did not have sufficient information to find that the Student had done so and did not believe the Student had

done so. Thus, the Assistant Principal explained to OCR that he found that the “[Redacted Content]” as stated in the BDR, and disciplined the Student for disruption and not for [Redacted Content], which requires a minimum sanction of [Redacted Content].

The Assistant Principal told OCR that he issued a [Redacted Content] because of the severity of the disruption caused by the Student’s conduct. Although the Assistant Principal told OCR that he sometimes compares a student’s offense to other similar offenses or speaks with other disciplinarians, as District Policy JK-R suggests, he did neither in issuing the Student’s discipline. When OCR asked him to explain the basis of the Student’s [Redacted Content], the Assistant Principal stated that he based the Student’s discipline on [Redacted Content]. However, despite the fact that the Assistant Principal initially acknowledged that the School did not have sufficient evidence to determine that the Student [Redacted Content], the Assistant Principal refused to acknowledge that the level of the disciplinary sanction was based, mostly, on [Redacted Content]. In addition, the Assistant Principal did not document the time he received the call from [Redacted Content], and thus the Assistant Principal could not recall the time that passed between when the Student [Redacted Content] and when the School identified the [Redacted Content].

After receiving notice of the [Redacted Content], the Complainant sent both the Assistant Principal and the Principal an email questioning the severity of the sanction. The exchange shows that the Assistant Principal acknowledged that there was no evidence that the Student [Redacted Content]. The Complainant also asked whether there were alternatives to [Redacted Content]. The Assistant Principal emailed the Complainant that “in this type of situation, we [Redacted Content]. [Redacted Content] aren’t options.” The Complainant then questioned the [Redacted Content] in light of the absence of evidence that the Student [Redacted Content] by stating that the Assistant Principal’s “assumption that he [Redacted Content].”

When the Assistant Principal did not respond to her email, the Complainant emailed the School Principal, again stating that the Student’s [Redacted Content] is based on the Assistant Principal’s assumption that the Student [Redacted Content]. The Complainant, among other things, reminded the Principal that District Policy permits exploration of alternatives to [Redacted Content]. In addition, the Student emailed the Assistant Principal and the Principal on [Redacted Content], with additional detail, consistent with his written statement. The Student’s email stated:

[Redacted Paragraphs]

Finally, the Complainant also forwarded the Principal a statement by the Student’s friend (the Witness). The Witness wrote: “I met up with [Student] at [Redacted Content] because he said he didn’t want to make the people wait for him [Redacted Content]. After he got [Redacted Content], so we went. [Redacted Content]. Then we walked around for a little bit, went to the library, then the tables near the gym because that’s where buses pick kids up [Redacted Content].” When the Parent asked the Witness if the Student did or did not [Redacted Content], the Witness wrote: “[Redacted Sentences].”

The Principal met with the Complainant on [Redacted Content], after the Student had served the [Redacted Content] and did not revisit the Assistant Principal’s decision. District Policy JKD does not provide appeal rights for [Redacted Content].

B. Similarly Situated Students

OCR reviewed District-provided discipline information from SY 2020-21 and 2021-22 regarding students who had engaged in disruption, the stated offense for which the Student was disciplined. OCR also reviewed the District’s discipline information for students disciplined for [Redacted Content] in those two school years given the District’s consideration of whether the Student had [Redacted Content].

1. Students Disciplined for Disruption

First, OCR identified 12 comparator students who were disciplined for disruption in both school years. These comparators include students who created a disturbance in the school by [Redacted Content], who created [Redacted Content], or who caused [Redacted Content].

As shown in the Table 1 below, only one of these 12 other students (a white student who [Redacted Content]) received an [Redacted Content]. Of the eleven students who were disciplined for disruption and did not receive an [Redacted Content], nine were white and four of these nine were disciplined by the same Assistant Principal as the Student.

Of note are several students:

- Students 1-4 are white and were disciplined less harshly by the Assistant Principal for disruption because none received [Redacted Content];
- Student 1, a white student, received a two-day after-school detention for [Redacted Content];
- Students 2 and 3, two white students with two prior disciplinary infractions for disruption, who [Redacted Content], received a two-period ISS from the same Assistant Principal as the Student;
- Student 4, a white student, received a 1-day ISS for disruption from the Assistant Principal;
- Five white students found to [Redacted Description] received only a one- to two-period ISS or a two-day after-school detention as compared to the Student’s [Redacted Content];
- Student 8, a white student who [Redacted Content], and received a two-day after school detention;
- Students 9, 10, and 11, three white students, [Redacted Content] and received a 0.25 day in-school-suspension (ISS); and
- Student 12, a white student, who [Redacted Content] and received a one-period ISS.

Table 1: Students Disciplined for Disruption in School Years 2020-21 and 2021-22

Student	Offense	SY	Race	Disciplinarian	Description	Outcome
---------	---------	----	------	----------------	-------------	---------

The Student	1 st	2021-22	Black/ Latino	Assistant Principal	[Redacted Content]	[Redacted Content]
Student 1	4 th	2021-22	White	Assistant Principal	[Redacted Content]	2-day after- school detention
Student 2	3 rd	2021-22	White	Assistant Principal	[Redacted Content]	2-period ISS
Student 3	3 rd	2021-22	White	Assistant Principal	[Redacted Content]	2-period ISS
Student 4	1 st	2020-21	White	Assistant Principal	[Redacted Content]	1-day ISS
Student 5	1 st	2020-21	Latino	Assistant Principal	[Redacted Content]	1-day ISS
Student 6	1 st	2021-22	White	Assistant Principal	[Redacted Content]	5-day OSS
Student 7	1 st	2021-22	Black	Administrator 1	[Redacted Content]	2-day after school detention
Student 8	1 st	2021-22	White	Administrator 1	[Redacted Content]	2-day after school detention
Student 9	1 st	2021-22	White	Administrator 2	[Redacted Content]	1-period ISS
Student 10	1 st	2021-22	White	Administrator 2	[Redacted Content]	1-period ISS
Student 11	1 st	2021-22	White	Administrator 2	[Redacted Content]	1-period ISS
Student 12	1 st	2021-22	White	Administrator 3	[Redacted Content]	1-period ISS

OCR carefully analyzed the discipline imposed by the Assistant Principal on Students 1-6 and compared that discipline, and the Assistant Principal's explanations for it, to the discipline the Assistant Principal imposed on the Student. As explained more fully below, OCR determined that the Assistant Principal's disciplinary decisions departed from the District's policies and procedures in favor of the white students and to the detriment of the Student. For example, the Assistant Principal categorized the conduct of Students 1, 2, 3, and 6 as disruption even though it could have been categorized as more serious offenses under District policy. In addition, the Assistant Principal did not consider the prior disciplinary history of Students 1, 2, and 3 when imposing discipline, offering a rationale not supported by District Policy. Finally, OCR observed that the Assistant Principal did not accurately describe the students' conduct or fully investigate that conduct, particularly with regard to whether the conduct was unsafe. In contrast,

the Assistant Principal included the conduct of other students ([Redacted Content]) when explaining the disciplinary consequence he imposed on the Student.

First, Student 1, a white student, received a two-day after school detention from the Assistant Principal, who described Student 1's conduct as [Redacted Content]. Student 1 had been disciplined three times in the past three months. OCR notes other discipline records show that the BDR, prepared by the Assistant Principal, does not contain an accurate or complete description of Student 1's conduct. The reporting student asserted that Student 1 had been [Redacted Content]. The reporting student also stated that Student 1 threatened to fight him and described the conduct as [Redacted Content]. Despite the alleged [Redacted Content] in the report, the Assistant Principal did not follow any of the investigatory procedures set forth in District Policy [Redacted Content].

Instead, the Assistant Principal told OCR that Student 1's alleged conduct would not violate the disciplinary policies prohibiting [Redacted Content] because Student 1 had denied the reporting student's accusation and stated that he had [Redacted Content] to get the reporting student's attention. The Assistant Principal did not explain how he arrived at this conclusion other than to state that he believed Student 1's description. Notably, the discipline record does not contain any record of Student 1's statement or any other investigatory steps that the Assistant Principal took (such as reviewing the previous day's video footage or identifying and interviewing witnesses to Student 1's alleged conduct).

In addition, despite Student 1's recent disciplinary history, the Assistant Principal did not apply the District's progressive discipline policy. When OCR asked the Assistant Principal whether Student 1's prior disciplinary history factored into his discipline, the Assistant Principal stated that progressive discipline applies only if the student is engaging in the same kind of offense, and not when a student has multiple offenses. The District's discipline policies do not support the Assistant Principal's interpretation of the policies, nor did the Assistant Principal appear to consider that the reporting student asserted that Student 1 had been engaging in the same offense [Redacted Content] for two weeks. The Assistant Principal asserted to OCR that the two-day after-school detention was an appropriate sanction for Student 1 without offering further explanation.

Discipline records reflect that Students 2 and 3 [Redacted Content] and that Student 6 [Redacted Content]. In the BDR for Students 2 and 3, the reporting teacher described the Students' conduct as "not safe," though did not indicate [Redacted Content]. OCR determined that the conduct of Students 2, 3, and 6 would meet the District's definition of [Redacted Content], which is [Redacted Content] and yet the Assistant Principal found that all three students engaged in only disruption, which allows for lesser sanctions than [Redacted Content]. According to District policy, [Redacted Content] requires suspension and a [Redacted Content]. The Assistant Principal did not explain why he did not categorize Student 2, 3, and 6's conduct as [Redacted Content].

Further, OCR noted that the Assistant Principal, as he had done with Student 1, did not fully investigate the impact of Student 2 and 3's conduct. The Assistant Principal acknowledged

during OCR’s interview that he did not ask the teacher who referred Students 2 and 3 for discipline what the teacher meant in describing the students’ behavior as unsafe or what damage was caused to the [Redacted Content]. The Assistant Principal did not explain why he did not gather more information about Student 2’s and 3’s [Redacted Content] behavior.

Lastly, Students 2 and 3, like Student 1, both had previous disciplinary infractions in the current school year when they [Redacted Content]. When OCR asked the Assistant Principal whether Students 2 and 3’s prior disciplinary history for disruption factored into their discipline, the Assistant Principal again suggested that the history did not apply. OCR also asked the Assistant Principal to explain why Students 2 and 3 received a less harsh punishment than the Student. In reply, the Assistant Principal referenced [Redacted Content]. In contrast to the Assistant Principal’s approach to discipline for Students 2 and 3, the Assistant Principal focused, when disciplining the Student, [Redacted Content]; the Assistant Principal did not consider the damage to the [Redacted Content] caused by Student 2’s and 3’s behavior when disciplining them.

Finally, Student 4, another white student who was disciplined by the Assistant Principal, received a one-day ISS for [Redacted Content]. Review of Student 4’s disciplinary file indicates the note contained a [Redacted Content]. The Assistant Principal told OCR that Student 4 told him that “he thought it was funny.” The Assistant Principal acknowledged that he did not ask Student 4 why he thought it was funny or why he [Redacted Content] because he “did not think it was important.” The Assistant Principal told OCR that he did not believe that the conduct could constitute [Redacted Content] because no student wanted to file a complaint. Therefore, the Assistant Principal did not report the incident to the District’s Title IX Coordinator. The Principal acknowledged that the conduct could create a hostile environment based on sex but stated a belief that [Redacted Content]. When asked to clarify this position, the Principal stated that she could not because she was not the disciplinarian.

Other students whose behavior created a [Redacted Content], but who were not disciplined by the Assistant Principal, all received lesser disciplinary sanctions than the Student. Students 9-11, all of whom were white, created [Redacted Content] when they [Redacted Content]. Each of these students received a one- or two-period ISS. None of the discipline records shows that any disciplinarian considered the length of time necessary to [Redacted Content].

In contrast to the more lenient discipline imposed on other students, despite more egregious conduct or the misclassification of the conduct, OCR examined the District’s explanation for the [Redacted Content] imposed on the Student. OCR asked the Assistant Principal and the Principal to explain the difference between the discipline of the students (after-school detention or ISS) and the discipline of the Student ([Redacted Content]). Both the AP and the Principal asserted to OCR that the Student’s punishment of a [Redacted Content] was harsher than that of white students who were found to have engaged in “disruption” because the Student’s conduct created a [Redacted Content] even though the District did not find that he created the [Redacted Content] and despite the fact that the District administered only ISS or after-school detention to five white students (Students 1, 2, Student 3, Student 9, 10, and 11) whom the District found had effectively created [Redacted Content].

The Assistant Principal also asserted that the “disruption” caused by the Student’s behavior was more severe than the disruption caused by the other 11 students. When asked to clarify, the Assistant Principal repeated that the Student’s conduct caused [Redacted Content]. OCR notes that [Redacted Content]; another student [Redacted Content] caused it to be closed. The Assistant Principal did not acknowledge during an interview with OCR that the discipline he imposed on the Student was attributable to another student’s conduct.

The Principal generally declined to comment about the difference between the discipline of the other 12 students and that of the Student, stating that she did not administer the discipline. When OCR asked the Principal to examine the discipline records to provide an explanation for the difference in the disciplinary sanction for Students 1-12 and the Student, based on the facts described by the disciplinarian in the records, she declined to provide an explanation other than to state that it was the Assistant Principal’s or other administrator’s call regarding what discipline to impose, whether to follow the District’s JICK or the District’s progressive discipline policy, or whether to classify certain offenses as [Redacted Content] or disruption.

2. Students Disciplined for [Redacted Content]

In addition to analyzing the District’s discipline decisions based on a finding of disruption, OCR examined the discipline files of six students whom School administrators found to have engaged in [Redacted Content] during SY 2020-21 and 2021-22, three of whom were white. Although all three white students caused [Redacted Content], two of the students received [Redacted Content] as the Student and one, Student 12 from Table 1 above, received an [Redacted Content]. Notably, the District’s documentation did not indicate that any of the students were [Redacted Content]. These departures from the District’s discipline policy to the benefit of three white students were not explained. When OCR asked whether the Student’s conduct ([Redacted Content]) was more like the conduct of the students in Table 1 above or the conduct of the six students who engaged in [Redacted Content], the Principal declined to answer.

C. Reports of Student Harassment Based on National Origin and Sex

Finally, OCR determined that the discipline files for Students 3, 4, and 18, three white students, included reports of conduct that could constitute harassment based on sex (sexual harassment) under Title IX and national origin (shared Jewish ancestry) under Title VI. However, OCR observed that the District did not respond to this reported harassment consistent with its harassment policies and procedures, but rather treated the conduct as disruption.

Student 3’s disciplinary records about [Redacted Content] as described above, also showed that Student 3 had previously told another Student in class, loud enough for other students in the class to hear, that he would “marry a [Redacted Content].” The Assistant Principal had a telephone conference with Student 3’s parent, but otherwise imposed no disciplinary sanction. Both the Assistant Principal and the Principal stated their belief to OCR that Student 3’s comment was not sexual in nature and therefore did not violate the District’s sexual harassment policy. When asked to explain what they thought Student 3 meant by “[Redacted Content],” neither the

Assistant Principal nor the Principal could provide an explanation, nor identify any steps the District had taken to investigate what Student 3 may have meant by his statement.

The records for Student 4 discussed above involved [Redacted Content] throughout the School. When OCR asked the Assistant Principal about this misconduct and why he gave Student 4 only a one-day ISS while giving the Student a [Redacted Content], the Assistant Principal told OCR that he did not believe that Student 4's conduct could constitute sexual harassment because no student wanted to file a complaint. The Principal acknowledged to OCR that the conduct could create a hostile environment based on sex but contended that the conduct was not more egregious than the Student's [Redacted Content]. Neither the Principal nor the Assistant Principal reported Student 4's conduct to the Title IX Coordinator.

The District's records for Student 18 showed that School Administrator 2 disciplined Student 18 for "Other Violation." However, the discipline records showed that Student 18 had drawn multiple [Redacted Content] and written the word "[Redacted Content]" on desks in the School. Administrator 2 imposed a 0.25-day ISS on Student 18. The Student's conduct was not reported by any School staff to the District's nondiscrimination coordinator. OCR asked the Principal to explain the difference between the disciplinary sanction between Student 18 and the Student, and she could not provide one. OCR asked the Principal whether there was any set of facts under which [Redacted Content] would be less egregious conduct than [Redacted Content], and the Principal declined to answer the question.

III. ANALYSIS

After carefully considering all of the information obtained during the investigation, OCR found by a preponderance of the evidence that the District's discipline of the Student violated Title VI. OCR also identified compliance concerns regarding the District's obligation to respond to reported incidents of harassment based on national origin (including shared Jewish ancestry), race, and color under Title VI and based on sex under Title IX.

A. Different Treatment Based on Race in Discipline

OCR found circumstantial evidence that creates an inference of discriminatory intent based on the Student's race. First, OCR identified multiple similarly situated students who were treated more favorably than the Student with respect to discipline for comparable or more serious misconduct. During SY 2020-21 and 2021-22, the District disciplined thirteen students at the School, including the Student, for "disruption" where the alleged conduct involved [Redacted Content]. There were ten white students disciplined for disruption – five of whom engaged in [Redacted Content] others and five of whom engaged in conduct more appropriately categorized as a more serious offense of [Redacted Content], as detailed above. Of the ten white students who were disciplined for disruption, only one received an [Redacted Content], and only one received a full day of ISS. The remaining students disciplined for disruption received after-school detentions or a partial day ISS even though the Assistant Principal stated in his email to the Complainant that "ISS and ASD [after-school detention] aren't options" for conduct like that of the Student.

The Assistant Principal and the Principal denied that they disciplined the Student based on his race, but offered no credible, legitimate explanation for the disparities in the discipline they imposed on the Student as opposed to white students who engaged in similar or more serious behavior or for why they categorized the misconduct of several white students as only disruption, with lighter consequences, [Redacted Content]. This pattern of departing from the District's normal discipline policy in favor of white students by categorizing their behavior more leniently than the policy allowed, while punishing the Student more harshly than the policy provided for "disruption" and more like the policy provided for "[Redacted Content]," constituted additional evidence that the disparate discipline of the Student was based on his race. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 US 252 (1977) (circumstantial evidence of intentional discrimination under Title VI includes the recipient's departures from regular procedures, practices, or substantive conclusions).

OCR asked the Assistant Principal, who disciplined several of the white students, and the Principal to provide an explanation of the District's different treatment received by the white students disciplined for disruption. The Assistant Principal stated only that the other students' conduct did not create [Redacted Content]. However, the Student's conduct, [Redacted Content], did not itself create a [Redacted Content]. Moreover, several of the other students' conduct did, in fact, create a [Redacted Content]: such as students who [Redacted Content] [Redacted Content]. For example, two students who [Redacted Content] engaged in behavior described by the teacher as "unsafe." However, the Assistant Principal did not question the teacher about this comment or about whether the Student's conduct damaged school property before issuing a single-period ISS. Notably, the Assistant Principal could not answer whether any of these actions damaged school property or potentially jeopardized student safety. When OCR asked, the Principal declined to offer any explanation for the apparent different treatment of white students who engaged in conduct resulting in more disruption but on whom the Assistant Principal imposed less severe discipline than on the Student.

In addition to the comparators already mentioned, OCR found that the District disciplined the Student more like students who had engaged in [Redacted Content] and less like students who engaged in disruption. Under District policy, students who engaged in [Redacted Content] must receive a suspension, but students who engage in disruption may receive a range of disciplinary sanctions, including a Student-Parent Conference, after-school detention, ISS, and OSS, depending on the severity of the disruption and the progressive discipline policy. OCR's review of District records reflects that the District generally did not impose OSS for disruption except in an egregious circumstance more appropriately classified as [Redacted Content]. The Student received an [Redacted Content] for the offense of disruption, unlike all other Students who were disciplined for engaging in disruption except for one student, Student 6, who [Redacted Content] and received an OSS. Seven of the white students received only ISS for their disruptions and two other white students received only after-school detention. That the Assistant Principal tried to justify the [Redacted Content] for the Student based on "the [Redacted Content]" he caused and the [Redacted Content] it required further indicates that the Assistant Principal disciplined the Student as if he had been found to engage in [Redacted Content] despite the lack of evidence identifying him as the student who [Redacted Content]. In contrast to how the District treated

the Student (disciplining him more harshly than his conduct supported), OCR found that the District classified certain offenses of four white students (Students 1, 2, 3, and 6) as only disruption when their conduct more accurately met the definitions of bullying (Student 1) or [Redacted Content] (Students 2, 3, and 6) and would have therefore required different investigatory procedures for alleged bullying and a harsher consequence – mandatory suspension and [Redacted Content].

Throughout the investigation, the District offered shifting and inconsistent explanations for its discipline of the Student, some of which deviated from its discipline policies. For example, when the Complainant asked the Assistant Principal if there was an alternative to suspension, the Assistant Principal told her that “in this type of situation, [Redacted Content]. ISS and ASD [after-school detention] aren’t options.” The Assistant Principal’s statement is directly contradicted by both District policy and his discipline of other students for disruption and is further evidence that the District disciplined the Student more harshly than other students found to have engaged in disruption and imposed a harsher punishment more akin to those students who were found to have [Redacted Content]. In addition, the District inaccurately asserts in its Narrative Statement that the Student could have used [Redacted Content], seemingly to suggest that the Student’s written statement is not to be believed. However, during OCR’s investigation we learned from District witnesses that the [Redacted Content] and thus not an option for the Student.

Most notably, when asked for the reason why the Student received a two-day OSS, the Assistant Principal stated that the Student’s sanction was in part due to the “severity” of the disruption, which he asserts [Redacted Content]. This assertion, however, is inconsistent with the Assistant Principal’s stated conclusion in the discipline forms - that the Student was found [Redacted Content]. The assertion likewise is inconsistent with the District’s having disciplined a student for [Redacted Content] – a more serious offense than [Redacted Content] – less harshly than the discipline it imposed on the Student. Nor could the District justify the Student’s harsher sanction based [Redacted Content]. Instead, OCR found multiple instances where similarly situated white students had engaged in previous misconduct and nonetheless were treated more favorably than the Student despite the District’s policy requiring administrators to consider disciplinary history.

Based on the evidence detailed above, OCR determined that the District’s shifting proffered reasons for disciplining the Student more harshly than nine other white students who engaged in similar and even worse disruptions were insufficient to explain the difference in the District’s treatment of the Student relative to these other similarly situated students and a pretext for different treatment based on race in violation of Title VI and its implementing regulations.

B. Concerns About the District’s Responses to Reported Harassment

During the course of the investigation, OCR also identified a compliance concern under Title IX with respect to the District’s responses to reports of possible sexual harassment by students and under Title VI with respect to reports of antisemitic conduct. OCR found multiple students who engaged in conduct that met the District’s definition of harassment or bullying who School administrators disciplined only for disruption and did not record any determination as to whether

the alleged conduct violated the District's harassment policies. For example, when District records of students disciplined for disruption revealed that Student 4 placed [Redacted Content] around the School, the Principal and Assistant Principal declined to acknowledge that this student's conduct could have violated the School's sexual harassment policy, which requires the District to respond to harassment that is reported or "is widespread or well known to students and staff." Similarly, despite the discipline records revealing that Student 3 loudly stated in front of other students that he would marry a "[Redacted Content]," the Assistant Principal refused to acknowledge the sexual connotation of Student 3's comment and how it might violate the sexual harassment policy. OCR has a concern that the District may have failed to consider if the reported conduct met the definition of sexual harassment in the Title IX regulation at 34 C.F.R. § 106.30(a), and if so, that the District may have failed to meet its obligation to respond to actual notice of sexual harassment in a non-deliberately indifferent way under 34 C.F.R. § 106.44(a).

Also concerning were the School administrators' response to reported antisemitic conduct. When OCR asked about Student 18, who drew [Redacted Content] on a desk and received only a quarter-day ISS for "disruption," neither the Assistant Principal nor Principal would acknowledge that drawing [Redacted Content] would reasonably be considered a more egregious offense than [Redacted Content], and they did not take steps to report the incident to the District's nondiscrimination coordinator. In this instance, the Assistant Principal did not follow the District's policy regarding bullying, which requires a special investigation procedure. OCR has a concern that the District may not have met its Title VI obligation to respond to reports of antisemitic harassment in a prompt and effective manner.

The Assistant Principal's and Principal's failure to respond to or report these incidents of alleged harassment based on sex and national origin raises a compliance concern with regard to the District's obligation to respond to harassment based on national origin (shared Jewish ancestry) under Title VI and sex (sexual harassment) under Title IX. Before OCR completed its investigation of these compliance concerns, the District agreed to resolve them under Section 302 of OCR's CPM by executing the enclosed Agreement.

IV. CONCLUSION

Based on careful consideration of the evidence and for the reasons stated throughout this letter, OCR concludes that the District discriminated against the Student in violation of Title VI by treating him differently with respect to discipline on the basis of race. Upon being advised of the concern and violation findings, the District entered into the Agreement to resolve the matter.

The Agreement requires the District to:

- Appoint a climate director with expertise in nondiscriminatory student discipline, alternatives to exclusionary discipline, implicit bias, and promoting and sustaining a positive school climate to ensure that the District's discipline policies, procedures, and practices, do not discriminate against students based on race, color, or national origin;

- Establish a Stakeholder Equity Committee to evaluate the District’s progress in ensuring nondiscrimination in discipline;
- Revise its discipline policies and procedures to promote their nondiscriminatory application;
- Develop a corrective action plan to examine and eliminate the root causes of race disparities in discipline of students at the School, and other schools if the District receives complaints of discriminatory student discipline based on race, color, or national origin;
- Collect and analyze discipline data to identify and eliminate any racial discrimination in the disciplinary process;
- Notify staff involved in the disciplinary process of the District’s obligations under the Agreement and their duty to administer discipline consistent with District policies and procedures in a nondiscriminatory way;
- Provide training to staff at the School to ensure they do not discriminate in the administration of discipline;
- Provide training to School staff employees responsible for responding to and investigating reports and formal complaints of sexual harassment to ensure they know how to comply with their obligations under Title IX and its implementing regulations.
- Hold Student and Parent Information Sessions to explain its student discipline and Title VI and Title IX harassment policies and its commitment to nondiscrimination in the administration of those policies;
- Conduct annual climate surveys with students, teachers/staff, and parents of all District schools to measure their perceptions of the District’s administration of school discipline and handling of harassment based on race, color, national origin, and sex under Title VI and Title IX; and
- Provide individual remedies to the Complainant and Student including correcting the Student’s disciplinary record.

By signing this resolution agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirement of this Agreement. Further, during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms and obligations of this Agreement.

The case is now in the monitoring phase. OCR will not close the monitoring of this Agreement until OCR determines that the District has demonstrated compliance with all the terms of this Agreement and is in compliance with Title VI and its implementing regulation at 34 C.F.R. Part 100. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, stating that this case is closed.

This concludes OCR’s investigation of this complaint and should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR

official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact [Redacted Content], the OCR attorney assigned to this complaint, at [Redacted Content].

Sincerely,

[Redacted Content]
Supervisory Attorney

Enclosure: Resolution Agreement

cc: [Redacted Content]